

AMENDED IN ASSEMBLY AUGUST 15, 2011

AMENDED IN ASSEMBLY JUNE 29, 2011

AMENDED IN SENATE APRIL 25, 2011

SENATE BILL

No. 20

Introduced by Senator Padilla

December 6, 2010

An act to repeal and add Section 114094 of the Health and Safety Code, relating to food facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 20, as amended, Padilla. Food facilities: menu labeling.

Existing law, the California Retail Food Code, requires, on and after January 1, 2011, each food facility in the state that operates under common ownership or control with at least 19 other food facilities with the same name in the state and that offers for sale substantially the same menu items or that meets other specified criteria to disclose calorie content information per standard menu item, as specified. The State Department of Public Health administers and local enforcement agencies enforce this code. Existing law provides that, on and after July 1, 2009, a food facility that violates these provisions is guilty of an infraction.

Existing law, the Federal Food, Drug, and Cosmetic Act, requires certain restaurants and similar retail food establishments that are part of a chain with 20 or more locations doing business under the same name and offering for sale substantially the same menu items to disclose nutrient content information, as specified, and provides that certain state and local nutrient content information requirements that are not identical to the federal law are preempted.

This bill would repeal the above-described state calorie content disclosure requirements of the California Retail Food Code, and would require a food facility that is subject to the federal disclosure provisions for nutrient content information or was subject to the state calorie content disclosure requirements, as specified, to comply with these federal disclosure requirements and the regulations adopted pursuant thereto. It would also require the department to administer and local enforcement agencies to enforce these provisions, *as specified*, and would make a violation thereof an infraction *or civil penalty*. By expanding the definition of a crime and adding new local enforcement duties, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) In 2008, the Legislature enacted Section 114094 of the
- 4 Health and Safety Code to provide consumers within California
- 5 with better access to nutritional information about prepared foods
- 6 sold at food facilities with at least 20 locations with the same name
- 7 in the state so that consumers can understand the nutritional value
- 8 of available foods.
- 9 (b) On March 23, 2010, the federal Patient Protection and
- 10 Affordable Care Act was enacted to, among other things, provide
- 11 consumers in all states with access to nutritional information about
- 12 the prepared foods sold at restaurants or similar retail food
- 13 establishments that are part of a chain with 20 or more locations
- 14 doing business under the same name.

(c) *It is the intent of the Legislature to harmonize state and federal disclosure requirements by repealing the requirements of Section 114094 in existence on July 1, 2011, and replacing them with the requirements of the federal Patient Protection and Affordable Care Act, and to provide state penalties for noncompliance with those federal rules.*

SEC. 2. Section 114094 of the Health and Safety Code is repealed.

SEC. 3. Section 114094 is added to the Health and Safety Code, to read:

114094. (a) A food facility subject to Section 343(q)(5)(H) of Title 21 of the United States Code or subject to this section as it read on July 1, 2011, shall comply with the requirements of that section of the United States Code and the regulations adopted pursuant thereto.

(b) Notwithstanding the Sherman Food, Drug, and Cosmetic Law (Part 5 (commencing with Section 109875) of Division 104), and to the extent permitted by federal law:

(1) The department shall administer and the local enforcement agency shall enforce this section *to the extent that the food facility is within the jurisdiction of the local enforcement agency pursuant to another state law.*

(2) A violation of this section is, *notwithstanding Section 114395*, an infraction, punishable by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), to be assessed by a local enforcement agency. A second violation within a five-year period from a prior violation shall be punishable by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000). For a third or subsequent violation within a five-year period, the fine shall be not less than two hundred fifty dollars (\$250) nor more than two thousand five hundred dollars (\$2,500). A food facility shall not be found to have committed a violation under this paragraph more than once during an inspection visit.

Alternatively, the local enforcement agency may assess a civil penalty of an amount that is no less than or greater than the amounts specified for fines in this paragraph.

(c) *Except for the civil penalties authorized by this section, this section shall not be construed to create or enhance any claim, right of action, or civil liability that did not exist under state law*

1 *prior to January 1, 2009, or limit any claim, right of action, or*
2 *civil liability that otherwise existed under state law prior to*
3 *January 1, 2009. To the extent that the food facility is within the*
4 *jurisdiction of the local enforcement agency pursuant to another*
5 *state law, the only enforcement mechanism of this section is the*
6 *local enforcement agency.*

7 *(d) This section shall not be implemented until the date that*
8 *compliance is required with regulations implementing Section*
9 *343(q)(5)(H) of Title 21 of the United States Code, as specified in*
10 *those regulations.*

11 SEC. 4. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution for certain
13 costs that may be incurred by a local agency or school district
14 because, in that regard, this act creates a new crime or infraction,
15 eliminates a crime or infraction, or changes the penalty for a crime
16 or infraction, within the meaning of Section 17556 of the
17 Government Code, or changes the definition of a crime within the
18 meaning of Section 6 of Article XIII B of the California
19 Constitution.

20 However, if the Commission on State Mandates determines that
21 this act contains other costs mandated by the state, reimbursement
22 to local agencies and school districts for those costs shall be made
23 pursuant to Part 7 (commencing with Section 17500) of Division
24 4 of Title 2 of the Government Code.